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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 924

ROBERT H. REDDICK,

Petitioner,

vs.

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland Affirming the conviction of the petitioner in the lower Court. In execution of the judgment petitioner was committed to the Maryland Penitentiary on March 23, 1959 for a term of five years where he is now imprisoned.

OPINION BELOW

The opinion of the Court of Appeals of Maryland (Tr. p. 127) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered February 16, 1959 (Appendix A, p. 21). The jurisdiction is invoked under Title 28 U.S.C.A. Section 2101(d), and this petition is filed under Rule 19b of this Court.

QUESTIONS PRESENTED

1. Whether there was any legal basis for the indictment under which petitioner was tried and convicted, and if there was did the State prove the crime charged.

2. Whether the seizure and use at the trial of the property of the petitioner was not in violation of the petitioner's constitutional rights.

3. Whether the petitioner received a fair and speedy trial.

STATUTES INVOLVED

Pertinent statutes are set forth in the argument where necessary.

STATEMENT

On April 26, 1957, all records of the petitioner were seized on a Search and Seizure warrant. On October 24, 1957, the petitioner was served with a warrant of arrest and put in jail.

On October 24, 1957, petitioner was denied a hearing on the warrant of arrest and was served with a special indictment containing two counts charging him with unlawfully affixing a State Seal. The petitioner was never arraigned on this charge, nor was he given a preliminary hearing as promised.

On December 2, 1957, petitioner was released on $5,000.00 bail.

On January 10, 1958, the Grand Jury of Baltimore City returned another indictment (Appendix B, p. 25) containing 10 counts, the first 8 of which charge the petitioner with the forging and uttering of a medical license, and the

9th and 10th of which charge the petitioner with the unlawful use of the seal of the State of Maryland.

On January 16, 1958, a motion to dismiss the indictment was filed and on February 7, 1958, an amended motion to dismiss was filed. The grounds for the motion were in substance that there was no legal basis for the indictment and that it deprived the petitioner of the "equal protection of the laws" in violation of the 14th Amendment to the Constitution of the United States and of the State of Maryland.

On April 2, 1958, an application for the restoration of the seized property was filed and on April 21, 1958 a motion supplementary to the application for restoration of seized property was filed.

The motion to dismiss the indictment was denied (Tr. p. 33), and the motion for the return of the seized property was denied (Tr. p. 108).

These questions were also raised in the Appellate Court.

The Court of Appeals of Maryland in its opinion affirmed the lower court (Appendix A, p. 21).

REASONS FOR GRANTING WRIT

1. The writ should be granted because the case involves interpretation of the State statutes affecting the liberty of the petitioner and others, and is of general importance or substance.

2. The writ should be granted because the Court of Appeals of Maryland, in order to uphold the lower court, erroneously held that the indictment (Appendix B, p. 25) charged a crime against the petitioner denounced by the Maryland Code (1957) Art. 27, Sections 45 and 46, when it is apparent that the statute does not apply.

3. Moreover, if as the Court of Appeals says, the indictment under which the petitioner was tried and sentenced was good at common law, then the sentence under the statute was wrong, and he was deprived of his liberty without due process of law.

ARGUMENT

1. There Was No Legal Basis For The Indictment

The first 8 counts of the indictment charge the petitioner with the crime of forging and uttering a medical license. In upholding the lower court decision the Court of Appeals seems to first rely on the Maryland Code (1957) Art. 27, Sections 45 and 46, and then as they state in their opinion that "* * * it would seem that the indictment for forgery and uttering would be good at common law."

The statutes involved as as follows:

"Sec. 45. Public documents generally.

"If any person shall falsely make, forge or counterfeit, or cause to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any commission, patent or pardon, or any warrant, certificate or other public security, whereby money may be drawn from the treasury of this State, or shall be concerned in printing, writing, signing or passing any such forged or counterfeited warrant, certificate or public security, knowing it to be such, with intention to defraud any person or persons, he shall be deemed a felon, and on being convicted thereof shall be sentenced to the penitentiary for a period not less than two or more than ten years."

"Sec. 46. Public seals.

"Every person who shall be convicted of the crime of counterfeiting the great seal of the State, for the time being, or the seal of any court, or any other public seal of this State, and of making use of the same, or

of stealing any of the said true seals, or of unlawfully, falsely and corruptly, or with evil intent, affixing any of them to any deed, warrant or writing, or who shall be convicted of having in his possession or custody such counterfeit instrument, and shall willfully conceal the same, knowing it to be falsely made or counterfeited, shall be sentenced to the penitentiary for not less than two or more than ten years."

An examination of Section 45 will disclose that it could not be the basis for the indictment in question (Appendix B, p. 25). The first part of this section deals exclusively with forging or counterfeiting any instrument or other public security resulting in unlawfully obtaining money from the State. No attempt was made to charge the petitioner with this crime. The second part of this section relates back to the first part and since the indictment does not charge the petitioner with forging or counterfeiting a commission, patent, pardon, warrant, certificate or other public security the second part of this section must fall.

Counts 9 and 10 of the indictment charge the petitioner with unlawfully affixing a public seal and the Court of Appeals by strained, legal logic attempts to uphold the conviction of the petitioner by citing Section 46. This Section provides that a person convicted of the crime of "counterfeiting the great seal of the State" and using the same or of stealing the same and affixing it to a deed, warrant or writing shall be subject to the jail sentence specified.

The petitioner was nowhere charged with counterfeiting, and furthermore, the evidence at the [illegible] that the seal involved was not the type of seal [illegible] by this Section. The seal used by the petitioner was the property of the Medical Homeopathic Society.

The Court of Appeals, however, does not stop there, it goes on to say that if the statutes under which the indictment was returned does not cover the case at bar, the indictment nevertheless would be good under common law. If this is true, then it is earnestly urged that the sentencing of the petitioner under the statute is illegal.

It is elementary that under the common law the crime of forgery is a misdemeanor, and yet the petitioner was sentenced to serve a term of five years in the Maryland Penitentiary

Furthermore, the State did not prove that the crime of forgery or uttering or attempting to forge or utter a medical license had been committed by petitioner.

Whether the offense that petitioner was charged with under the 10 count indictment was under Common Law or by Statute, the most important prerequisite of the crime is that a valid and legal instrument or document be the subject matter of the crime and in order to be guilty of forgery or uttering or attempting to forge or utter, a fake document, illegal or without effect, upon its face could not be the basis of the crime alleged.

In *State v. Smith* (8 Yerg) Tenn. 150, the court held:

> "An instrument void in law upon its face is not the subject of forgery because the genuine and counterfeit would be equally useless — imposing no duty or conferring no right."

In *People v. Snyder*, 85 N.Y. 282, the Court held:

> "Thus, it was not a valid instrument for the purpose intended, but on the contrary was void and ineffective on its face. The crime of forgery may not be predicated upon such an instrument, at least without further averment."

In *Gooch v. State*, 24 Ala. 477, the Court held:

"(1) The offense of forgery is committed if the accused intended to defraud by forging or uttering, as genuine, a spurious instrument which has the capacity to defraud.

"(2) But a writing void on its face, illegal in its very frame, is not the subject of forgery in consequence of its incapacity to effect a fraud.

"(3) The false making of a bill of exchange, void by statute, will not constitute the offense [of forgery]".

The *Gooch* case cited above is frequently cited by the Courts as the authority in cases involving the crime of forgery. It states two points of law that are concerned in this Appeal. For one, it holds that a writing void on its face cannot be the subject of forgery. Secondly, "The false making of a bill of exchange, void by statute, will not constitute the offense of forgery".

There are other authorities to the same effect.

In *State v. McManus*, 78 Vt. 433, it was held "It is not to be presumed that anyone could be deceived or defrauded by a document that is void on its face".

Along the same lines in:

Territory v. Delana, 3 Okla. 573, it was held that a certificate issued by the Clerk of a district Court setting forth that a juror had attended a certain number of days, and was entitled to a certain number of dollars, as his pay therefor, was unauthorized, absolutely void, and of no effect in law, it appearing that there was no statutory authority for the issuance of the certificate set out in the indictment.

There is authority in our State which holds to this basic point of law and that is in *Laird v. State*, 61 Md. 309 in which the Court said:

"One cannot, it is true, be convicted of the forgery of a paper absolutely invalid upon its face, and which would not operate to the prejudice of another."

If we assume what State contends is true in that Article 43 of the Annotated Code of Maryland 1957 was the true law of the State of Maryland on July 1st, 1957, then there was no Homeopathic Society of Homeopathic Board of Medical Examiners and the petitioner as Secretary Treasurer of said Board had no right to issue medical licenses of a non-existent Board, then the alleged license which was never issued was a palpable fraud on its face. It had no value whatsoever. The test of a medical license, under Article 43, Section 119 to 149 inclusive, Annotated Code of Maryland 1957 Edition is not its issuance but is its recordation. It is the recordation and registration of the medical license with the proper authorities that gives the true effect to the proper issuance.

Article 43, Section 129 of Annotated Code of Maryland, 1957 Edition, reads as follows:

"Any person receiving a license from the Board before commencing the practice of medicine and surgery in this State shall file the same with the Clerk of the Circuit Court of the County in which he or she may reside, or with the Clerk of the Circuit Court of Baltimore City, if said person shall reside therein, and it shall be the duty of said Clerk to record said license in full, together with the home address in such county or city of such licensee, in a book kept for the purpose, as a part of the records of his office; and the number of the book and the page therein containing said recorded copy shall be noted by said clerk upon the face of said license and such clerk shall promptly forward notice of said filing to the Board. In case said person should, after the recording of such license, permanently remove his or her residence, to some other county of the State, or to Baltimore City, he or she shall thereupon at once

file said license, or certified copy thereof, for record as aforesaid, with the Clerk of the Circuit Court of the County or City to which he or she shall have so removed; said record shall be open to public inspection under proper restrictions as to their safe keeping, and in all legal proceedings shall have the same weight as evidence that is given to the records of conveyance of land. The fees for such recordation shall be two dollars ($2.00) to be paid by the person whose license is registered."

Section 133 states:

"From and after the first day of June, 1957, no person shall practice medicine or surgery in the State of Maryland, unless he or she shall be duly registered as a physician or surgeon, in accordance with the provisions of this subtitle".

Section 134 states:

"All persons who shall hereafter commence to practice medicine or surgery in this State, shall not be entitled to be registered in the registry of physicians and surgeons, as required by law, except upon filing with the Clerk of the Circuit Court of the County or City in which he or she shall reside, a license from the duly constituted Board of Medical Examiners of this State, in accordance with the terms of Sections 128, 129."

Section 135 states:

"All persons whose licenses have been heretofore filed and recorded in accordance with Section shall be held to be duly registered physicians and surgeons within the provision of Art. 43, Section 132 Annotated Code of Md. (1951 Edition), and all persons who shall hereafter receive and file licenses, to be recorded in accordance with said Section 129, shall be registered as physicians and surgeons under said section, and the fee to be paid for such registration and for the registration of the application to the Clerk or the license therewith, as the case may require, shall be one dollar."

Section 136 reads:

> "If any person shall unlawfully obtain and procure himself to be registered as physician or surgeon, either by false and untrue statement contained in his application to the Clerk of the Court, as required by this sub-title or by presenting to said clerk a false and untrue license, or one fraudulently obtained by false and fraudulent statements made to the Board of Medical Examiners, he or she shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars, or be sentenced to confinement in the house of correction for not less than one or more than three years, or both, and shall forfeit all rights, privileges and immunities obtained or conferred upon him by virtue of such registration as physician or surgeon."

Section 137 reads:

> "Any person who after the first day of July, 1894, shall practice or attempt to practice medicine or surgery in this State, without being registered in accordance with the provisions of this subtitle, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than two hundred dollars for each offense."

Section 141 states:

> "It shall be the duty of the police commissioner of Baltimore City and of the sheriff of each county in the State, to see that all practicing physicians in the State shall be legally registered according to the provisions of this subtitle, and to report to the State's Attorney of the City or County all cases of the violation of the provisions of this subtitle."

One can readily see the significance and importance that the legislature lent to the allegedly legal Medical Practice Act of 1957 in respect to Registration. It actually placed seven (7) sections in the Act, all of which reiterate or em-

phasize the fact that a license must be registered with the proper authorities *before it can take any effect.* Without registration, you are not, under Article 43 aforesaid, a physician or surgeon. You cannot practice until registration. The medical license granted by the Society under Article 43 aforesaid has no stature or legal effect until its registration or recordation. *It cannot, under any circumstances, be a valid and binding instrument or document,* until it is actually recorded and registered. It is, in essence, nothing until the formality of complying with the Code's provisions as to recording or registration are fully met.

In *Rollins v. State,* 22 Tex. App. 548, the Court held:

> "When the law makes an instrument absolutely inoperative without certain formalities, to falsely make the instrument without such formality is not forgery."

Quoting from *Costley v. State,* 14 Tex. App. 156 the Court goes further and states:

> "and this is true, even though the instrument is so like the genuine as to be liable to deceive most persons."

The State in its case against the petitioner insisted at all times that the alleged license to be issued and actually never issued, was spurious and of no legal value. According to the State, no examination had ever been given to the State witness and he was not entitled to any kind of medical license, good or bad, from any competent legal authority delegated to give examinations or issue licenses. If assuming the State's argument is accepted as true, the petitioner after 1957 had no authority as Secretary, Treasurer to issue medical licenses as the State contends that the Homeopathic Board of Medical Examiners was legislated out of existence, then any alleged medical license issued by the petitioner or anyone else purporting to act

on behalf of the Homeopathic Board of Medical Examiners was not only worthless and meaningless, it was void ab initio. You certainly cannot issue something that under the Statute cannot exist or be in being.

If this is not true, then the converse must be. If Article 43, Medical Practice Act, Sections 119 to 149 inclusive Annotated Code of Maryland 1957 Edition does not control Medical Licenses, then the petitioner would still have authority as Secretary Treasurer to issue Licenses. Certainly, the petitioner could not be guilty of forging an instrument or document that he had the legal authority to sign. The mere fact that he may have terribly abused his authority would not be forgery. If it were a good instrument on its face, petitioner may have been in contempt of court for using or abusing his curtailed authority, but not of the crime of forgery.

The State did not prove that the petitioner with unlawfully making use of a public seal of the State nor did it prove that the petitioner had unlawfully falsely, and corruptly, and with evil intent of affixing same to a writing.

The Seal involved in this case was not a public seal nor was it a State seal. It was a private seal belonging to a private corporation that had never been controlled by the State, and strangely enough, it has never been abolished by the State. The Seal used by the Homeopathic Board of Medical Examiners was not the Seal of the Board. It was the Seal of the Society.

Article 43, Section 117 of the Annotated Code of Maryland (1951 Edition) reads:

> "From and after the first Tuesday in June, eighteen hundred and ninety-two, there shall be and continue to be two separate boards of medical examiners for

the State of Maryland — one representing the Medical and Chirurgical Faculty of the State of Maryland, and one representing the Maryland State Homeopathic Medical Society of the State of Maryland. The members of said respective boards in office on the eleventh day of April, 1902, shall continue to hold and exercise their respective offices up to the first Tuesday in June nineteen hundred and two, said two boards of medical examiners shall be reorganized, and thereafter said boards shall be constituted as follows: Each of said boards shall consist of eight members, who shall be selected by the Medical and Chirurgical Faculty of the State of Maryland and the Maryland State Homeopathic Medical Society, respectively, at the annual meetings of said respective societies; and each appointee is immediately after his election to be furnished with a certificate thereof by the society electing him. Each such member of said respective boards, except those elected in the year nineteen hundred and two, shall serve for four years, or until his successor is appointed and qualified. At their respective annual meetings held in the year nineteen hundred and two, each of said aforementioned societies shall elect the full number of eight examiners for its respective board, of whom two shall be elected for four years, two for three years, two for two years, and two for one year, and thereafter two examiners shall be elected by each society in each year, as hereinbefore provided, to serve for a term of four years, or until their successors are appointed and qualified, the outgoing members to be eligible for re-election. The terms of office of all members so elected shall begin on the first Tuesday in June, in the year in which they shall be respectively elected; each board is to have the exclusive right to examine, pass upon the qualifications of and license its own applicants. The examiners shall be physicians actually engaged in the practice of medicine or surgery in the State of Maryland, and of recognized ability and honor. No member of any medical college or university, who

passes upon the qualifications of graduates of any medical school shall be eligible to serve as a member of either of said boards.) In case of a vacancy occurring in either of said boards, the board in which such vacancy shall occur shall fill the same until the next annual meeting of the Medical and Chirurgical Faculty, or the Maryland State Homeopathic Medical Society, according as the board in question may be the representative of one or other of said societies, when said society shall elect an examiner to serve for the remainder of such unexpired term."

At no place in the section enumerated does the State create the Maryland State Homeopathic Medical Society. The Statute creates two separate Boards of Medical examiners. One representing the Medical and Chirurgical Faculty of the State of Maryland, and the other representing the Homeopathic Society. The Society at the time of the passage was already in existence, having been incorporated in the year 1875 and at that time already had its own Seal.

The petitioner contends that pending final disposition of the referendum proceedings in the Courts of this State that Article 43, Sections 116 to 144C inclusive, Annotated Code of Maryland (1951 Edition) are still the law regulating the issuance and control of Medical Licenses. If again, we assume for purposes of argument, that Article 43, Secs. 119 to 149 inclusive, Annotated Code of Maryland (1957 Edition) are the true law of the State of Maryland, in respect to Medical Licenses then said Statute should be strictly construed. The new Medical Practice Act *did not abolish the Homeopathic Medical Society.* It simply said that only one Board of Medical Examiners shall exist in Maryland.

Section 120 of Article 43 Annotated Code of Maryland (1957 Edition) reads:

"From and after June 1, 1957, there shall be one Board of Medical Examiners for the State of Maryland, the Board of Medical Examiners for the State of Maryland, selected by the Medical and Chirurgical Faculty of Maryland, shall continue after June 1, 1957, as constituted on that date, with each member serving for the remainder of the time for which selected. The Board shall consist of eight members, who shall be selected by the Medical and Chirurgical Faculty of the State of Maryland at the annual meeting of said Faculty; and each appointee is immediately after his selection to be furnished with a certificate thereof by the Faculty. Each such member of said Board shall serve for four years, or until his successor is selected and qualified. Two examiners shall be selected by the Faculty in each year, to serve for a term of four years or until their successors are selected and qualified, the outgoing members to be eligible for re-election. The terms of office of all members so elected shall begin on the first day in June, in the year in which they shall be respectively selected; the Board is to have the exclusive right to examine, pass upon the qualifications of and license applications for the practice of medicine or surgery in the State of Maryland. The examiners shall be physicians actually engaged in the practice of medicine or surgery in the State of Maryland, and of recognized ability and integrity. In case of a vacancy occurring on the Board it shall fill the same until the next annual meeting of the Medical and Chirurgical Faculty, when said Faculty shall select an examiner to serve for the remainder of such unexpired term. The Governor shall after reasonable notice and opportunity for hearing have the power to remove any member of the Board for any of the following causes; misconduct in office, incompetency, immorality, wilful neglect of duty or any cause which is a ground for revocation of a license to practice medicine and surgery in this State."

2. The Search And Seizure Of The Petitioner's Property Was Illegal.

Admittedly (See opinion Appendix A), documents seized under a search and seizure warrant issued April 26, 1957 were seized illegally.

As of that date there was no one to make affidavit that a treasonable ground of suspicion could be deduced as to the petitioner's culpability. Mere surmise is not sufficient, nor is any anticipated crime the basis of legal suspicion or probable cause.

Section 551, Article 27 of Annotated Code of Maryland (1957 Edition) reads as follows:

> "Whenever it be made to appear to any Judge of the Supreme Bench of Baltimore City, or to any Judge of any Circuit Courts in the counties of this State, or to any justice of the peace in this State, by a writing signed and sworn to by the Applicant, that there is probable cause, the basis of which shall be set forth in said writing to believe that any misdemeanor or felony is being committed by any individual or in any building, apartment, premises, place or thing within the territorial jurisdiction of such Judge or Justice of the Peace, or that any property subject to seizure under the Criminal laws of the State is situated or located on the person of any such individual or in or on any such building, apartment, premises, place or thing, then such Judge or Justice of the Peace may forthwith issue a search warrant directed to any duly constituted policeman, constable or police officer authorizing him to search such suspected individual building, apartment, premises, place or thing, and to seize any property found liable to seizure under the Criminal laws of its State, provided that any such search warrant shall name or describe, with reasonable particularity, the individual, building, apartment, premises, place or thing to be searched, the grounds

for such search and the name of the applicant on whose written application as aforesaid the warrant was issued, and provided further that any search or seizure, under the authority of such search warrant, shall be made within fifteen (15) calendar days from the date of the issuance thereof and after the expiration of said fifteen (15) day period said warrant shall be null and void. If, at any time, on application to a judge of the Circuit Court of any county or of the Criminal Court of Baltimore City, it appears that the property taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds in which the warrant was issued, or that the property was taken under a warrant issued more than fifteen (15) calendar days prior to the seizure, said judge must cause it to be restored to the person from whom it was taken, but if it appears that the property taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then said Judge shall order the same retained in the custody of the person seizing it or to be otherwise disposed of according to law."

If nothing else, with all of the factors that go to make up a valid search warrant under the Statute, as of April 26, 1957, there was no probable cause and all of the items seized should have been returned upon motion made.

Although as the Court of Appeals states, the warrant is not in the record, it is undoubtedly true that the illegally obtained information and the illegally seized property was used as a basis for the indictment of January 10, 1958.

The seizure of any property under a warrant other than the property designated in the warrant is illegal and a conviction based upon the use of property not specifically in such a warrant must fall.

Rabinowitz v. U. S., 339 U.S 56.

The law is so jealous of the rights of the people under the 4th Amendment to the Constitution that it will upon slight grounds reverse.

3. Did The Petitioner Receive A Fair And Speedy Trial?

That Amendment VI of the Constitution of the United States provides as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

That Article 21 of the Maryland Declaration of Rights provides:

> "That in all criminal prosecutions every man hath a right to a speedy trial by an impartial jury."

A preliminary hearing is not a condition precedent to a valid indictment.

Mentzer v. Warden, 191 Md. 744;
Sanner v. Warden, 191 Md. 756;
Edwardson v. Wright, 193 Md. 710, Certiorari denied, 69 Supreme Court 1506.

A preliminary hearing may not be necessary to a valid indictment, it is true, but an arraignment is a necessary part of every criminal proceedings and trial and the petitioner in this particular case, was not given a speedy arraignment under his constitutional right. The Grand Jury, in the process of trying to make up its mind on what charge to indict the petitioner upon, acted upon a Warrant of Arrest, then a Special Indictment and then January 10th, 1958, 76 days later, the indictment that is now before this Court. It was a delaying process only. If the State were serious in its intentions to give the petitioner a speedy trial, it could have elected to immediately arraign him on a specific charge at the time of the Warrant of Arrest.

which under the circumstances was no more than a John Doe Warrant. It was being used solely for the purpose of holding the petitioner in legal custody until a formal charge could be laid against him. The State went a step further in its scheme of delay. It recommended a special presentment to the Grand Jury. And, after the Special presentment, the State made no effort to arraign or try the petitioner, but let an unnecessary and illegal lapse of time run until the Grand Jury could bring in another indictment, and then waited almost 6 months (April 2, 1958) to arraign the petitioner.

This is substantiated by *Mallory v. U. S.*, 354 U.S. 332. The defendant was charged with the crime of Rape. The U. S. District Court for District of Columbia entered judgment of conviction and Defendant appealed. U. S. Court of Appeals affirmed and Defendant brought Certiorari. The Supreme Court, Mr. Justice Frankfurter, "held that where it appeared that Defendant was not promptly arraigned as required by Federal Rule of Criminal procedure, admission of defendant's confession was improper."

Also the requirement of Federal Rule of Criminal procedure that arraignment be "without unnecessary delay" is part of procedure devised by Congress for safeguarding individual rights without hampering effective and intelligent law-enforcements.

Also the next step in proceeding after person has been arrested is to arraign the arrested person before a judicial officer as quickly as possible so that he may be advised of his rights and so that the issue of probable cause may be promptly determined.

In *McNabb v. United States*, 318 U.S. 332, it is stated:

"Legislation such as this requiring that the police must with reasonable promptness show legal cause for

detaining arrested persons constitutes an important safeguard, not only in assuring protection for the innocent but also in securing conviction of the guilty by methods that command themselves to a progressive and self confident society."

Case was reversed and remanded.

CONCLUSION

It is respectfully submitted that it is here demonstrated that the indictment under which the petitioner was tried was without legal basis; that the seizure of his property and its use at the trial was illegal and that the petitioner did not receive a fair and speedy trial.

For the reasons stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — THE OPINION

This appeal is from a judgment and sentence to a term of five years in the Maryland Penitentiary, following a general verdict of guilty by a jury upon a ten count indictment charging forgery and uttering, and attempting to forge or utter, a license to practice medicine and surgery in the State of Maryland, issued on or about October 19, 1957, and unlawfully affixing and making use of a public seal of the State. The Attorney General filed a motion to dismiss the appeal, on the ground that the appellant failed to print in his record extract all of the testimony necessary to the determination of the sufficiency of the evidence to sustain the conviction, in violation of Maryland Rule 828b. At the hearing of the appeal we reserved judgment on the motion. Since the record extract contains at least enough to permit us to pass on the motion to dismiss the indictment, we think the motion to dismiss the appeal must be denied.

The appellant was formerly the Secretary-Treasurer of the Board of Medical Examiners representing the Maryland State Homeopathic Medical Society. However, prior to the time alleged in the indictment, he had resigned as a member of the Board of Medical Examiners, and subsequently, by decree of the Circuit Court of Baltimore City, he was permanently restrained and enjoined from conducting examinations and issuing licenses for the practice of medicine and surgery in this State. The decree was affirmed by this Court on April 9, 1957, and motion for reargument was denied, May 9, 1957. *Reddick v. State*, 213 Md. 18. The evidence in the instant case was to the effect that Dr. Reddick, nevertheless, issued a license to practice medicine and surgery to one Joseph Biscardi, an automobile mechanic without professional qualifications, in October, 1957. The certificate, in the required statutory form, bore the facsimile seal of the State and the imprint of the seal of the Society, and was dated December 27, 1955. It falsely recited that Biscardi had been examined by the Board and found proficient and qualified to practice medicine and surgery, and it was signed by Robert D. Brown as President and Robert H. Reddick as Secretary of the Society.

The appellant's first contention is that the indictment did not charge any offense. As to the first eight counts charging forgery and uttering, he points out that Code (1957), Art. 43, Sec. 119 *et seq.*, do not purport to deal with the unlawful issuance of a medical license, but merely prescribe penalties for practicing without a license. This would seem to overlook the fact that Code (1957), Art. 27, Sec. 45, under the sub-title "Public Documents generally", makes it a crime, and a felony, to falsely make, forge or counterfeit "any commission, patent or pardon, * * * with intention to defraud any person or persons, * * *." The penalty is from two to ten years in the Penitentiary. See also Code (1957), Art. 27, Sec. 46, relating to unlawfully affixing a public seal. It may well be that the term "commission" could be construed to include a license to practice medicine and surgery issued by a public agency to which is delegated a part of the police power of the State. See *Atchison v. State*, 204 Md. 538, 544, *cert. den.* 348 U.S. 880. But if we assume, without deciding, that the statute does not cover the case at bar, it would seem that the indictment for forgery and uttering would be good at common law. See *Arnold v. Cost*, 3 G. & J. 219. Forgery has been defined as 'the false making or material alteration, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability." 2 Wharton's *Criminal Law and Procedure* (Anderson's ed.), Sec. 621. See also Clark and Marshall, *Crimes* (5th ed.), Sec. 398. Even where a statute has been enacted covering forgery, the common law offense is still applicable where the statute was not intended to cover the whole field or to repeal the common law. Clark and Marshall, *supra*, Sec. 14; Joyce, *Indictments*, Sec. 14. Cf. *Lutz v. State*, 167 Md. 12, 15.

The appellant argues that the persons intended to be defrauded are not named, and that the person named, Biscardi, got what he bargained for. It may be inferred that the licensee, who, according to the testimony, paid a large sum for the purported license, intended to use it for the purpose of representing himself to the general public as a licensed and qualified medical practitioner. It is true that

because of the outstanding injunction and notice to the various Clerks of Court, the purported license could probably not have been recorded in Maryland, as required by law; but its possession by the licensee might in itself have sufficed to work a fraud on the public, in this State or elsewhere. Intent to defraud may relate to persons not named in the indictment, or to the public generally. 2 Wharton, *supra*, Sec. 623; *Arnold v. Cost, supra*. It is not necessary to allege in an indictment for forgery or uttering, or to prove, that it was the intent of the defendant to defraud any particular person. Code (1957), Art. 27, Sec. 612; *Marine v. State*, 171 Md. 104, 109. Of course, the general verdict of guilty would support a conviction on any good count in the indictment. *Berger v. State*, 179 Md. 410, 415; *Jewett v. State*, 190 Md. 289, 293. Cf. *Lenoir v. State*, 197 Md. 495, 506. We hold that the forgery and uttering counts were good, so it is unnecessary to consider the other counts.

The appellant contends that the court erred in denying his petition to restore certain documents taken from him under a search and seizure warrant issued April 26, 1957, long prior to the indictment filed January 10, 1958. He claims that the warrant was illegal and this vitiated the indictment based thereon. We find no merit in the contention. The warrant is not in the record before us and we cannot pass on its validity. It is well settled that inquiry is limited to the allegations contained in the affidavit, in passing on probable cause. *Burrell v. State*, 207 Md. 278, and cases cited. The Attorney General states that the documents in question were seized in connection with another proceeding, had no relevance to the instant case, and were not offered in evidence. There is nothing to show that the indictment was based on the documents, nor are we informed as to what the documents were.

The appellant contends that he was deprived of a speedy trial, in violation of Article 21 of the Maryland Declaration of Rights. The defendant's trial began on April 21, 1958, about three months after his indictment. In the interval, there were various preliminary motions and amended motions filed by the defendant and heard by the court. The

last of these was not disposed of until March 24, 1958. There was no request for an earlier trial date. Cf. *Harris v. State*, 194 Md. 288. There is no showing of unreasonable delay. The appellant argues, however, that since he was arrested on October 24, 1957, on a charge that was not pressed, there was an undue delay in the action of the Grand Jury in bringing in the present indictment. This novel contention is wholly without merit. Until the Grand Jury acted there was no case to be tried. Failure to press an earlier and different charge has no relevance to the present appeal.

The appellant further contends that the evidence was legally insufficient to support the verdict. The thrust of the argument is that the certificate issued by Dr. Reddick was void on its face, and could not be of any legal effect until recorded. But we think the certificate was not so absolutely invalid upon its face that it could not operate to the prejudice of another, within the rule stated in *Laird v. State*, 61 Md. 309. The mere fact that it was falsely antedated lends color to its apparent authenticity. In any event, the point is not properly before us. The record shows that the appellant did not renew his motion for a directed verdict at the close of the whole case, after he had offered evidence. Hence, we are precluded from reviewing the sufficiency of the evidence. See Maryland Rule 738a; *Bowen v. State*, 206 Md. 368, 375; *Jackson v. State*, 214 Md. 454, 460, and cases cited.

JUDGMENT AFFIRMED, WITH COSTS.

APPENDIX B — THE INDICTMENT

January 10, 1958—Indictment 4165/57 filed in manner and form as follows:

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

The jurors of the State of Maryland, for the body of the City of Baltimore, do on their oath present that ROBERT H. REDDICK, late of said City, on the nineteenth day of October, in the year of our Lord nineteen hundred and fifty-seven, at the City aforesaid, unlawfully did falsely make, forge, alter, and counterfeit a certain writing: namely, a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS

of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D., having offered us satisfactory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we, therefore, have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,
President.

/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, against the peace, government and dignity of the State.

SECOND COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, on the said nineteenth day of October, in the said year of our Lord nineteen hundred and fifty-seven, at the City aforesaid, unlawfully did cause and procure to be falsely made, forged, altered, and counterfeited a certain writing, namely, a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS

of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D., having offered us satisfactory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we therefore, have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,
President.

-/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, against the peace, government and dignity of the State.

THIRD COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, late of the City of Baltimore aforesaid, on the said nineteenth day of December, in the said year of our Lord nineteen hundred and fifty-seven, at the City of Baltimore aforesaid, unlawfully did willingly aid and assist in falsely making, forging, altering, and counterfeiting a certain writing, a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS
of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D. having offered us satisfactory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the

boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we therefore have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,

/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, against the peace, government and dignity of the State.

FOURTH COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, late of the City of Baltimore aforesaid, on the said nineteenth day of December, in the said year of our Lord nineteen hundred and fifty-seven, at the City of Baltimore aforesaid, unlawfully did utter and publish as true, a certain false, forged, altered and counterfeited writing: a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS
of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D., having offered us satis-

factory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we therefore, have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,
President.

/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, against the peace, government and dignity of the State.

FIFTH COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, on the said nineteenth day of October, in the said year of our Lord nineteen hundred and fifty-seven, at the City aforesaid, unlawfully did attempt to falsely make, forge, alter, and counterfeit a certain writing: a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS
of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D., having offered us satisfactory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we, therefore, have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,
President.

/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, against the peace, government and dignity of the State.

SIXTH COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, on the said nineteenth day of October, in the said year of our Lord

nineteen hundred and fifty-seven, at the City aforesaid, unlawfully did attempt to cause and procure to be falsely made, forged and counterfeited a certain writing, a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS

of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D., having offered us satisfactory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we, therefore have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,
President.

/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

SEVENTH COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, late of the City of Baltimore aforesaid, on the said nineteenth day of December, in the said year of our Lord nineteen hundred and fifty-seven, at the City of Baltimore aforesaid, unlawfully did attempt to wilfully aid and assist in falsely making, forging, altering and counterfeiting a certain writing: a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS
of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D., having offered us satisfactory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient and qualified to practice medicine and surgery, we, therefore, have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,
President.

/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

EIGHTH COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, late of the City of Baltimore aforesaid, on the said nineteenth day of December, in the said year of our Lord nineteen hundred and fifty-seven, at the City of Baltimore aforesaid, unlawfully did attempt to utter and publish as true, a certain false, forged, altered and counterfeited writing: a license to practice medicine and surgery, of purport following, to wit:

THE BOARD OF MEDICAL EXAMINERS

of the State (Seal of Maryland) of Maryland

To all whom it may concern, Greeting:

Be it known that JOSEPH BISCARDI, M.D., on the 7th day of December, 1955, A.D., having offered us satisfactory proof that he was more than twenty-one years of age, and had received a proper preliminary education; we therefore gave a written order for the examination of said JOSEPH BISCARDI, M.D., before one of the boards of medical examiners of the State of Maryland; that the said JOSEPH BISCARDI, M.D., was fully examined before our said board and found proficient

and qualified to practice medicine and surgery, we, therefore, have granted to said JOSEPH BISCARDI, M.D., this our

LICENSE TO PRACTICE MEDICINE AND SURGERY

in the State of Maryland as a physician and surgeon, and have caused the names of the president and secretary of our board to be subscribed and the seal of our society affixed hereto.

Witness our hands and the seal of our society this 27th day of December, 1955, A.D.

/s/ ROBERT D. BROWN, M.D.,
President.

/s/ ROBERT H. REDDICK, M.D.,
Secretary.

(Homeopathic seal) 1975

with intent then and there to defraud, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

NINTH COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, on the said nineteenth day of October, in the said year of our Lord nineteen hundred and fifty-seven, at the City aforesaid, unlawfully did make use of a certain public seal of this State contrary to the form of the Act of Assembly in such case made and provided and against the peace, government and dignity of the State.

TENTH COUNT.

And the Jurors aforesaid, on their oath aforesaid, do further present that the said ROBERT H. REDDICK, on the said nineteenth day of October, in the said year of our Lord nineteen hundred and fifty-seven, at the City aforesaid,

unlawfully, falsely, and corruptly, and with evil intent, did affix a certain public seal of this State to a writing, contrary to the form of the Act of Assembly in such case made and provided and against the peace, government and dignity of the State.

J. HAROLD GRADY,

The State's Attorney for the City of Baltimore.

FILE COPY

Office Supreme Court, U.S.
FILED
JUN. 12 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 924

ROBERT H. REDDICK,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

C. FERDINAND SYBERT,
Attorney General,
JOSEPH S. KAUFMAN,
Assistant Attorney General,
Attorneys for Respondent.

The Daily Record Co., Baltimore 3, Md.

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IN THE

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ROBERT H. REDDICK,

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STATE OF MARYLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals of Maryland appears in full on pages 21-24 of the Appendix to the Petition for for Writ of Certiorari, and is also reported in 219 Md. 95, 148 A. 2d 385.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on February 16, 1959, but Respondent denies that jurisdiction is founded under 28 U.S.C.A., Section 2101(d), or under Rule 19(1)(b) of this Court, as alleged by Petitioner.

QUESTIONS PRESENTED

It is believed by the Respondent that the following questions clarify the vague and inaccurate questions presented by the Petitioner:

1. Was the indictment legally sufficient to charge Petitioner with a crime?

2. Was the Petitioner entitled to an order of restoration of property pursuant to Article 27, Section 551, Annotated Code of Maryland (1957 Ed.), which property was seized under a valid search and seizure warrant in another and unrelated proceeding?

3. Was the Petitioner denied a fair and speedy trial?

STATUTES INVOLVED

Pertinent statutes are set forth in the Petition for Writ of Certiorari.

STATEMENT

The Petitioner formerly held the office of Secretary-Treasurer of the Board of Medical Examiners, representing the Maryland State Homeopathic Medical Society, which, prior to June 1, 1957, was authorized and empowered to license qualified persons to practice medicine and surgery. However, prior to the time alleged in the indictment, the Petitioner had resigned from his position as a member of the Board of Medical Examiners, representing the Maryland State Homeopathic Medical Society, aforementioned, and subsequently, by decree of the Circuit Court of Baltimore City, dated August 13, 1956, the Petitioner was permanently enjoined and restrained from conducting examinations and issuing licenses for the practice of medicine and surgery, and also was enjoined and restrained from acting

on behalf of the aforesaid Board. That decree was affirmed by the Court of Appeals of Maryland on April 9, 1957 (Motion for Reargument was denied on May 9, 1957). See *Reddick v. State*, 213 Md. 18, 130 A. 2d 762. A Petition for a Writ of Certiorari was denied by this Court on October 14, 1957. 355 U.S. 832, 2 L. Ed. 2d 44, 78 S. Ct. 50.

Notwithstanding the issuance of the aforementioned injunction, the evidence in the instant case clearly established that the Petitioner issued a license to practice medicine and surgery in October, 1957, to one Joseph Biscardi, a retired automobile mechanic, who had previously been convicted of practicing medicine without a license, which fact was known by the Petitioner. A consideration of $5,000 was paid by Biscardi to the Petitioner for this license. The certificate of licensure, in proper statutory form (Article 43, Section 126, Annotated Code of Maryland (1957 Ed.)), bore the facsimile seal of the State of Maryland and also bore the imprinted seal of the Society, and was dated December 27, 1955. The certificate further falsely recited that on the 7th day of December, 1955, Biscardi had offered satisfactory proof of his educational qualifications and that he had taken an examination and was found to be proficient and qualified to practice medicine and surgery. The spurious certificate was signed by the Petitioner as Secretary and by one Robert D. Brown, M.D., as President (in fact, during December, 1955, Dr. Julius Chepko was the President of the Board of Medical Examiners representing the Homeopathic Medical Society).

A jury under Judge Anselm Sodaro, sitting in the Criminal Court of Baltimore, returned a general verdict of guilty upon a ten-count indictment charging forging and uttering and attempting to forge and utter a license to practice medicine and surgery in the State of Maryland,

and of unlawfully affixing and making use of a public seal of the State. Thereafter, the Petitioner filed a motion for a new trial to the Supreme Bench of Baltimore City, which motion was denied. Petitioner was sentenced to incarceration in the Maryland Penitentiary for a term of five years, which judgment was affirmed by the Court of Appeals of Maryland.

ARGUMENT

This case represents one of the boldest attempts to defraud the people of the State of Maryland by a scheme to issue licenses to practice medicine and surgery to unqualified persons. The subject matter was presented to the Circuit Court of Baltimore City, after which the Petitioner was enjoined from engaging further in his illegal activities and, notwithstanding said injunction, the Petitioner continued to issue licenses to unqualified persons without examination and in return for large sums of money.

The Petitioner presents limited issues for consideration, and it is obvious that a review on certiorari by this Court is neither necessary, desirable nor warranted. There was no Federal question raised in the trial court, and the record clearly shows that no constitutional right of the Petitioner has been infringed upon. The Petitioner has attempted to mislead this Court by misstating the points involved and in a vague way has seemed to endeavor to raise Federal grounds which were not raised in the State court and which are not properly raised in this Court. The decision of the Court of Appeals of Maryland is so clearly correct and the protection afforded to the Petitioner's rights so broad in Maryland that no question warranting decision by this Court is presented.

I.

THE INDICTMENT WAS LEGALLY SUFFICIENT TO CHARGE PETITIONER WITH A CRIME.

The Petitioner was charged with the offense of forging and uttering a license to practice medicine and surgery, which the Court of Appeals of Maryland found has been recognized from early times as an offense at common law. See *Arnold v. Cost*, 3 G. & J. 219; 2 Wharton's *Criminal Law and Procedure* (Anderson's Edition, 621); and Clark & Marshall, *Crimes*, 5th Ed., Section 398. Even where a statute has been enacted specifically covering forgery, the common law offense has been held to be applicable where the statute was not intended to cover the whole field or repeal the common law. See Clark & Marshall, *supra*, Section 14; Joyce, *Indictments*, Section 14; and *Lutz v. State*, 167 Md. 12, 15.

Notwithstanding the fact that the indictment charged a crime, the Petition for Writ of Certiorari does not present any Federal question since the question of the sufficiency of indictments is a matter for interpretation by State courts and not by this Court. *Edelman v. California*, 344 U.S. 357, 97 L. Ed. 387, 73 S. Ct. 293.

The Petitioner further contends that the evidence was legally insufficient to support the verdict. The crux of this argument is that the certificate signed and issued by the Petitioner was void on its face and, therefore, could not possibly deceive anyone. The fact that it was falsely antedated gave color to its apparent authenticity. However, the point was not properly raised in the lower court because the Petitioner failed to renew his motion for a directed verdict at the end of the entire case after he had offered evidence, and the Court of Appeals was, therefore,

precluded from reviewing the sufficiency of the evidence under Rule 738-a of the Maryland Rules of Practice and Procedure.

II.

THE PETITIONER WAS NOT ENTITLED TO AN ORDER OF RESTORATION OF PROPERTY PURSUANT TO ARTICLE 27, SECTION 551, ANNOTATED CODE OF MARYLAND (1957 ED.), WHICH PROPERTY WAS SEIZED UNDER A VALID SEARCH AND SEIZURE WARRANT IN ANOTHER AND UNRELATED PROCEEDING.

The Respondent takes serious issue with the statement of the Petitioner that, *admittedly*, the documents seized under a search and seizure warrant, issued by a judge of the Supreme Bench of Baltimore City on April 26, 1957, were seized illegally. The documents seized pursuant to a validly issued search and seizure warrant were not connected with the offense charged in the indictment on the cause before this Court, but were seized some six months prior to the commission of this offense and grew out of another, separate and unrelated offense of which the Petitioner had been duly charged. None of the documents seized under the search and seizure warrant was used or attempted to be used as evidence at the trial of this case. In addition thereto, counsel representing the Petitioner in the lower court had complete access to the documents held by the State, if he had desired to use them in defense of the Petitioner in this proceeding. The record clearly shows that neither the Petitioner nor his counsel took advantage of the opportunity to review or to use the seized documents in Petitioner's defense.

In view of the fact that the seized documents had no connection with the offense charged in this cause a copy of the search warrant was not a part of the record of this proceeding and there was no proper test of the validity of the search warrant in this case. The Petitioner filed in

the trial court a motion for restoration of these documents, pursuant to the provisions of Article 27, Section 551, Annotated Code of Maryland (1957 Ed.). In said petition, the Petitioner did not allege that the documents were seized as a result of an unlawful and unconstitutional search and seizure, but merely that there was no probable cause for the issuance of said search and seizure warrant by a judge of the Criminal Court of Baltimore. In the lower court and in the Court of Appeals of Maryland, the Petitioner did not claim that his constitutional rights under the Fourth Amendment were violated, and this issue has been raised for the first time in this Court. The Petitioner has cited no authority to show that the State court did not have the power and authority to issue the search and seizure warrant involved. The Court of Appeals of Maryland, in its opinion, found no merit to the contention that the documents seized long prior to the indictment and prior to the offense charged deprived the Petitioner of any constitutional or statutory right.

It is obvious that no substantial Federal question has been raised.

III.

THE PETITIONER WAS NOT DENIED A FAIR AND SPEEDY TRIAL.

The Petitioner contends that he was deprived of his constitutional right to a fair and speedy trial. The docket entries reveal that the Petitioner was indicted on January 10, 1958, and that a hearing on the merits was begun on April 21, 1958. During the interim period Petitioner filed several motions to dismiss the indictment and for restoration of property seized under a search and seizure warrant in another proceeding. These preliminary motions were finally disposed of on March 24, 1958. There was no request

or demand on the part of the Petitioner for an early trial date. In the absence of such a demand, there can be no possible error. See *Harris v. State*, 194 Md. 288. In addition, the question was not raised in the trial court and was raised for the first time on appeal to the Court of Appeals of Maryland. The Petitioner has vaguely inferred to this Court that he was held in legal custody for a long period of time pending the finding of an indictment by the Grand Jury. This is not true. The case was promptly heard after the finding of an indictment by the Grand Jury, even though the Petitioner attempted by many devious means to delay trial of the case.

CONCLUSION

The Respondent respectfully submits that an examination of Petitioner's arguments and the position which he takes indicate that there is no substantial Federal question involved, and further that the decision below turns upon matters solely within the province of the State courts and, therefore, this case should not be reviewed by this Court. For the reasons heretofore assigned, the Petition filed to this Honorable Court for the issuance of a writ of certiorari should be denied.

Respectfully submitted,

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